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UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 TEOFIL BRANK,
aka "Jarec Wentworth,"
aka "@JarecWentworth,"

18 Defendant.

CR No. 15-131(A)-JFW

SUPPLEMENT TO GOVERNMENT'S
SENTENCING POSITION

Hearing Date: October 26, 2015
Hearing Time: 9:00 a.m.
Location: Courtroom of the
Hon. John F. Walter

20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorneys Kimberly D. Jaimez
23 and Eddie A. Jauregui, hereby files this supplement to its sentencing
24 position as to defendant Teofil Brank.

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The government's supplemental position is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: October 22, 2015

Respectfully submitted,

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/s/
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION & FACTUAL BACKGROUND

This case stems from defendant's extortion and attempted extortion of D.B. for over \$1.5 million in cash and personal property, in violation of 18 U.S.C. §§ 875(d), 880, 1951(a), and 1952, as alleged in the indictment (Dkt. 10). On July 9, 2015, a jury convicted defendant. Sentencing is scheduled for October 26, 2015.

On October 9, 2015, the government filed a sentencing position concurring with the criminal history calculation in the Presentence Report ("PSR") and recommending a mid-range guidelines sentence of 80 months' imprisonment (Dkt. 326.).¹

On October 14, 2015, defendant filed his sentencing position under seal (Dkt. 330) and claimed, among other things, that defendant is a U.S. citizen "by operation of law." Specifically, defendant claimed that an immigration specialist at the Federal Public Defender's Office concluded that defendant acquired automatic citizenship under the Child Citizenship Act of 2000 and is in the process of submitting an "N-600" form to the U.S. Citizenship and Immigration Services ("USCIS"). On this basis defendant objects to the PSR's assertion that defendant is a "citizen of another country"

¹ The government wishes to correct a citation error in its initial sentencing memorandum. In the government's initial Sentencing Memorandum, the government noted that defendant falsely accused the victim, D.B., of sexual contact with minors and cited to docket number 61 in support of that statement. (See Gov't's Sentencing Mem. at 5-6.) Upon further review, that citation is incorrect as docket number 61 did not address such allegations. Defendant's allegations concerning D.B. and minors were raised at various points in the pre-trial litigation, and the FBI eventually cleared the victim of these allegations as evidenced in the reports submitted to this Court for in camera review on May 6, 2015 (Dkt. 77.)

1 and claims that defendant should be afforded benefits reserved for
2 United States citizens when committed to Bureau of Prison's custody.
3 (Def. Pos., 4.)

4 No decision has been obtained regarding defendant's N-600 form.
5 An order of removal has not been issued. Defendant has not sought
6 declaratory relief with respect to his alleged citizenship.

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8 **II. ARGUMENT: DEFENDANT'S NATIONALITY CLAIMS ARE NOT PROPERLY BEFORE
THIS COURT**

9 The question of defendant's nationality is not properly before
10 this sentencing court.² The Court of Appeals for the Ninth Circuit
11 has jurisdiction to ultimately determine nationality claims properly
12 in dispute, and may only refer nationality claims to the district
13 court for a hearing on such claims where there are genuine issues of
14 material facts before the court. See 8 U.S.C. § 1252(b)(5); Ayala-
15 Villanueva v. Holder, 572 F.3d 736, 738 (9th Cir. 2009) (holding that
16 the Court of Appeals has jurisdiction over nationality claims
17 pursuant to 8 U.S.C. § 1252(b)(5) in an appeal of a removal order).
18 Typically, nationality claims are raised in the context of an order
19 of removal. Ayala-Villanueva, at 736. Alternatively, an action may
20 be brought under Section 2201 of Title 28 for a declaratory judgment
21 concerning citizenship. Neither of these predicates applies here.

22 Defendant is not currently litigating an order of removal and
23 has not sought a declaratory judgment regarding his alleged
24 citizenship. Said differently, the issue of defendant's nationality

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26 ² The statements in the amended PSR are accurate and reflect
27 defendant's current status with the Bureau of Immigration and Customs
Enforcement as well as his claims regarding citizenship (Dkt. 334,
¶78, 335). These citizenship claims, however, have no affect on
28 sentencing or the relevant USSG calculations.

1 is not procedurally before this Court. Any questions with respect to
2 defendant's nationality should be reserved for USCIS, an immigration
3 judge, the Board of Immigration Appeals, or the Court of Appeals when
4 the issue becomes ripe. At this time, however, questions regarding
5 defendant's citizenship should not be considered as part of
6 defendant's sentencing or as part of the judgment and commitment
7 order for this conviction. This Court is not the appropriate forum
8 for such claims.

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